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**ALPHIN v. LOWMAN.**

Nov. 20, 1913.

[79 S. E. 1029.]

**1. Evidence (§ 420\*)—Joint Indorsement—Agreement between Indorsers—Statutes.**—A showing aliunde that joint payees of a note jointly indorsed it on an agreement of one of them to indemnify the others, in case of default of the maker, is not prevented by the last sentence of Negotiable Instruments Law (Code 1904, § 2841a) § 68, providing: "As respects one another indorsers are liable prima facie in the order in which they indorse; but evidence is admissible to show that as between or among themselves they have agreed otherwise. Joint payees or joint indorsees are deemed to indorse jointly and severally."

[Ed. Note.—For other cases, see Evidence, Cent. Dig. §§ 1728, 1795, 1800, 1804, 1815, 1821, 1929-1944; Dec. Dig. § 420.\* 10 Va.-W. Va. Enc. Dig. 710; 15 Va.-W. Va. Enc. Dig. 769.]

**2. Frauds, Statute of (§ 21\*)—Promise to Answer for Debt of Another—Indemnity Agreement between Indorsers.**—The agreement of one of several joint accommodation indorsers of a note, whereby he induced the others to join in the indorsement, that he would indemnify the others in case of default of the maker of the note, is not within the statute of frauds (Code 1904, § 2840), as an undertaking to answer for the debt or default of another, but is his original undertaking or promise to answer for his own debt.

[Ed. Note.—For other cases, see Frauds, Statute of, Cent. Dig. § 33; Dec. Dig. § 21.\* 6 Va.-W. Va. Enc. Dig. 519; 14 Va.-W. Va. Enc. Dig. 480; 15 Va.-W. Va. Enc. Dig. 429.]

Error to Circuit Court, Bath County.

Action by one Lowman against L. C. Alphin. Judgment for plaintiff. Defendant brings error. Affirmed.

*Geo. A. Revercomb*, of Covington, and *John W. Stephenson*, of Warm Springs, for plaintiff in error.

*John T. Delan* and *H. H. Byrd*, of Warm Springs, for defendant in error.

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**DAVIS v. COLE BROS.**

Nov. 20, 1913.

[79 S. E. 1033.]

**1. Evidence (§ 187\*)—Documents—Best and Secondary Evidence.**—Evidence held to show that an instrument offered in evidence was

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\*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

an original and not a copy and therefore was not objectionable on the ground that the original had not been sufficiently accounted for.

[Ed. Note.—For other cases, see Evidence, Cent. Dig. §§ 674, 675; Dec. Dig. § 187.\* 2 Va.-W. Va. Enc. Dig. 355; 14 Va.-W. Va. Enc. Dig. 150; 15 Va.-W. Va. Enc. Dig. 119.]

**2. Appeal and Error (§ 1050\*)—Evidence—Prejudice.**—Defendant was not prejudiced by the answer to a question where he himself testified to the same fact.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 1068, 1069, 4153-4157, 4166; Dec. Dig. § 1050.\* 1 Va.-W. Va. Enc. Dig. 592; 14 Va.-W. Va. Enc. Dig. 92; 15 Va.-W. Va. Enc. Dig. 68.]

**3. Witnesses (§ 268\*)—Cross-Examination—Scope.**—Where, in an action on notes for the price of a sawmill, defendant claimed that the mill had not been delivered, a question on cross-examination of one of the original parties to the transaction calling for the amount of money the witness had to pay for the mill on the day it was advertised to be sold, where he got the money, and what he did with it, was proper.

[Ed. Note.—For other cases, see Witnesses, Cent. Dig. §§ 931-948, 959; Dec. Dig. § 268.\* 13 Va.-W. Va. Enc. Dig. 956; 14 Va.-W. Va. Enc. Dig. 1099; 15 Va.-W. Va. Enc. Dig. 1096.]

**4. Witnesses (§ 330\*)—Cross-Examination—Evidence—Foundation for Impeachment.**—In an action on notes for the price of a sawmill, a question asked one of the parties to the transaction on cross-examination whether he did not give one of the plaintiff's as collateral to secure the notes sued on, a note signed by the witness' grandfather, and whether the latter had not afterwards denied his signature and claimed that the note was a forgery, was admissible to lay a foundation for attacking the credibility of the witness.

[Ed. Note.—For other cases, see Witnesses, Cent. Dig. §§ 1106-1108; Dec. Dig. § 330.\* 13 Va.-W. Va. Enc. Dig. 966; 14 Va.-W. Va. Enc. Dig. 1100; 15 Va.-W. Va. Enc. Dig. 1098.]

**5. Sales (§ 358\*)—Recovery of Price—Evidence.**—In an action on notes for the price of a sawmill "outfit," a letter written by plaintiffs admitting an offer to throw off \$150 if defendants would pay the whole debt and declining to take the "outfit" off defendants' hands showed on its face that it related to the transaction in question and was therefore relevant and admissible.

[Ed. Note.—For other cases, see Sales, Cent. Dig. §§ 1019-1055; Dec. Dig. § 358.\* 12 Va.-W. Va. Enc. Dig. 80; 14 Va.-W. Va. Enc. Dig. 916.]

**6. Sales (§ 358\*)—Action for Price—Evidence.**—In an action on notes for the purchase price of a sawmill outfit alleged to have been secured by a note purporting to have been signed by defendants'

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grandfather but which he claimed never to have signed, whether one of the plaintiffs handed this note back to defendants and in doing so said that he had taken the note to defendants' grandfather and he had repudiated it and said it was a forgery was relevant and properly allowed.

[Ed. Note.—For other cases, see Sales, Cent. Dig. §§ 1049-1055; Dec. Dig. § 358.\* 12 Va.-W. Va. Enc. Dig. 80; 14 Va.-W. Va. Enc. Dig. 916.]

**7. Sales (§ 358\*)—Action for Price—Evidence.**—In an action on notes for the price of a sawmill outfit, a question asked one of plaintiffs as to his knowledge concerning whether defendant D. sold any timber to his codefendants, S. Bros., to which the witness replied that he understood that he did sell a quantity of timber to S. Bros. for \$2,000, was admissible.

[Ed. Note.—For other cases, see Sales, Cent. Dig. §§ 1049-1055; Dec. Dig. § 358.\* 12 Va.-W. Va. Enc. Dig. 80; 14 Va.-W. Va. Enc. Dig. 916.]

**8. Appeal and Error (§ 499\*)—Bill of Exceptions—Sufficiency—Review.**—A bill of exceptions to the admission of a letter in evidence, stating a general objection without any reason therefor, is not reviewable.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 2295-2298; Dec. Dig. § 499.\* 5 Va.-W. Va. Enc. Dig. 374; 14 Va.-W. Va. Enc. Dig. 418; 15 Va.-W. Va. Enc. Dig. 361.]

Error to Circuit Court, Russell County.

Action by Cole Bros. against A. W. Davis and others. Judgment for plaintiffs, and defendant Davis brings error. Affirmed.

*W. H. Bird, H. L. Kidd, and S. B. Quillen*, all of Lebanon for plaintiff in error.

*Finney & Wilson*, of Lebanon, for defendant in error.

#### YELLOW POPLAR LUMBER CO. v. GOBLE.

Nov. 20, 1913.

[79 S. E. 1036.]

**1. Master and Servant (§ 265\*)—Negligence—Proof.**—The happening of an accident is not evidence of negligence by the master; that being an affirmative fact to be established by the injured servant.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. §§ 877-908, 955; Dec. Dig. § 265.\* 9 Va.-W. Va. Enc. Dig. 721; 14 Va.-W. Va. Enc. Dig. 697; 15 Va.-W. Va. Enc. Dig. 658.]

**2. Master and Servant (§ 278\*)—Injury to Servant—Negligence**

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\*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.